

11-8-21

Proposed Law**Section 1. Part 13 of Division 2 of the Labor Code (commencing with Section 2698) is amended to read:****Part 13**

2698 Title. This Part shall be known, and may be cited, as the Labor Code ~~Private Attorneys General~~ Fair Pay and Employer Accountability Act of 2004 2022.

2698.1 Findings and Declarations. The people of the State of California find and declare as follows:

(a) While most California employers fully comply with the laws governing just employee compensation and working conditions, some companies disregard the law, forcing employees to hire a lawyer to recover the compensation they are owed.

(b) The State of California must reform and streamline the system to improve compliance with the law so that employees receive what they are owed quickly and efficiently.

(c) Employers who cheat workers should be held accountable and small businesses that follow the law should be protected from shakedown lawsuits.

(d) Enforcement of the current wage and hour laws should not depend on backlogged courts, with lawyers charging exorbitant fees deducted from whatever compensation the employee can recover, but instead the state should be guaranteeing full, fair, and swift recovery without the need to hire a lawyer or go to court.

2698.2 Statement of Purpose. The purpose of this Part is to further the protection of workers from violations of laws governing wages and working conditions, by doing all of the following:

(a) Reforming current law to provide a more effective system that provides better results for workers without the cost or delay of needing to hire an attorney, while leaving in place all other laws that allow direct access to the courts for labor law violations.

(b) Ensuring that independent state regulators enforce the laws that employers must follow and that workers get paid what they are owed on time without having to file a lawsuit.

(c) Focusing directly on bad actors by doubling both existing statutory penalties and the civil penalties imposed by this Initiative for companies that willfully violate the law.

(d) Reforming the current law awarding the harmed employee only 25% of the monetary penalties imposed for violations by requiring that 100% be awarded to the employee.

(e) Providing resources to guide and assist employers who want to be sure they are following the law.

(a) Notwithstanding any other provision of law, for all violations of any provision of this code that is enforceable by the Labor Commissioner, except a provision that specifically provides for a civil or statutory penalty, and except as modified by subsection (b) for willful violations, only the Labor Commissioner may award a civil penalty of one hundred dollars (\$100) per pay period to the aggrieved employee for the initial violation and two hundred dollars (\$200) per pay period to the aggrieved employee for each subsequent violation.

(b) For all willful violations of this code, the Labor Commissioner may award double the amount provided by subsection (a) and double the amount of any statutory penalties that apply to the violation.

(c) All penalties awarded pursuant to this section shall be distributed to the aggrieved employee.

(d) For the purposes of this section:

(1) a violation is willful if, at the time of the violation, the employer intentionally violated the law and there is no good faith dispute regarding whether a violation occurred.

(2) "aggrieved employee" means any person who was employed by the alleged violator and against whom the alleged violation was committed; and

(3) "subsequent violation" means a violation that occurs after a court or the Labor Commissioner determines that the practice or omission by the same employer is a violation of the law.

(e) The penalties provided by this section shall not apply to any violation of a posting, notice, agency reporting, or filing requirement of this code, except where the filing or reporting requirement involves mandatory payroll or workplace injury reporting.

~~Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.~~

~~(a) For purposes of this part, "person" has the same meaning as defined in Section 18.~~

~~(c) For purposes of this part, "aggrieved employee" means any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.~~

~~(d) For purposes of this part, "cure" means that the employer abates each violation alleged by any aggrieved employee, the employer is in compliance with the underlying statutes as specified in the notice required by this part, and any aggrieved employee is made whole. A violation of paragraph (6) or (8) of subdivision (a) of Section 226 shall only be considered cured upon a showing that the employer has provided a fully compliant, itemized wage statement to each aggrieved employee for each pay period for the three-year period prior to the date of the written notice sent pursuant to paragraph (1) of~~

subdivision (c) of Section 2699.3.

~~(e) (1) For purposes of this part, whenever the Labor and Workforce Development Agency, or any of its departments, divisions, commissions, boards, agencies, or employees, has discretion to assess a civil penalty, a court is authorized to exercise the same discretion, subject to the same limitations and conditions, to assess a civil penalty.~~

~~(2) In any action by an aggrieved employee seeking recovery of a civil penalty available under subdivision (a) or (f), a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.~~

~~(f) For all violations of this code, except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions as follows:~~

~~(1) If, at the time of the alleged violation, the person does not employ one or more employees, the civil penalty is five hundred dollars (\$500).~~

~~(2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.~~

~~(3) If the alleged violation is a failure to act by the Labor and Workplace Development Agency, or any of its departments, divisions, commissions, boards, agencies, or employees, there shall be no civil penalty.~~

~~(g) (1) Except as provided in paragraph (2), an aggrieved employee may recover the civil penalty described in subdivision (f) in a civil action pursuant to the procedures specified in Section 2699.3 filed on behalf of himself or herself and other current or former employees against whom one or more of the alleged violations was committed. Any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs, including any filing fee paid pursuant to subparagraph (B) of paragraph (1) of subdivision (a) or subparagraph (B) of paragraph (1) of subdivision (c) of Section 2699.3. Nothing in this part shall operate to limit an employee's right to pursue or recover other remedies available under state or federal law, either separately or concurrently with an action taken under this part.~~

~~(2) No action shall be brought under this part for any violation of a posting, notice, agency reporting, or filing requirement of this code, except where the filing or reporting requirement involves mandatory payroll or workplace injury reporting.~~

~~(h) No action may be brought under this section by an aggrieved employee if the agency or any of its departments, divisions, commissions, boards, agencies, or employees, on the same facts and theories, cites a person within the timeframes set forth in Section 2699.3 for a violation of the same section or sections of the Labor Code under which the aggrieved employee is attempting to recover a civil penalty on behalf of himself or herself or others or initiates a proceeding pursuant to Section 98.3.~~

~~(i) Except as provided in subdivision (j), civil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the Labor and Workforce Development Agency for enforcement of labor laws, including the administration of this part, and for education of employers and employees about their rights and responsibilities under this code, to be continuously appropriated to supplement and not supplant the funding to the agency for these purposes; and 25 percent to the aggrieved employees.~~

~~(j) Civil penalties recovered under paragraph (1) of subdivision (f) shall be distributed to the Labor and Workforce Development Agency for enforcement of labor laws, including the administration of this part, and for education of employers and employees about their rights and responsibilities under this code, to be continuously appropriated to supplement and not supplant the funding to the agency for those purposes.~~

~~(k) Nothing contained in this part is intended to alter or otherwise affect the exclusive remedy provided by the workers' compensation provisions of this code for liability against an employer for the compensation for any injury to or death of an employee arising out of and in the course of employment.~~

~~(l)(1) For cases filed on or after July 1, 2016, the aggrieved employee or representative shall, within 10 days following commencement of a civil action pursuant to this part, provide the Labor and Workforce Development Agency with a file-stamped copy of the complaint that includes the case number assigned by the court.~~

~~(2) The superior court shall review and approve any settlement of any civil action filed pursuant to this part. The proposed settlement shall be submitted to the agency at the same time that it is submitted to the court.~~

~~(3) A copy of the superior court's judgment in any civil action filed pursuant to this part and any other order in that action that either provides for or denies an award of civil penalties under this code shall be submitted to the agency within 10 days after entry of the judgment or order.~~

~~(4) Items required to be submitted to the Labor and Workforce Development Agency under this subdivision or to the Division of Occupational Safety and Health pursuant to paragraph (4) of subdivision (b) of Section 2699.3, shall be transmitted online through the same system established for the filing of notices and requests under subdivisions (a) and (c) of Section 2699.3.~~

~~(m) This section shall not apply to the recovery of administrative and civil penalties in connection with the workers' compensation law as contained in Division 1 (commencing with Section 50) and Division 4 (commencing with Section 3200), including, but not limited to, Sections 129.5 and 132a.~~

~~(n) The agency or any of its departments, divisions, commissions, boards, or agencies may promulgate regulations to implement the provisions of this part.~~

2699.1

(a) The division shall be a party to any employee complaint filed with the Labor Commissioner pursuant to Labor Code section 98.

(b) An arbitration agreement shall have no force or effect for any complaint filed by an employee with the Labor Commissioner under Labor Code section 98.

2699.2

The legislature shall ensure that all necessary funding is provided to the division as needed to fully meet the division's mandates under the Labor Code.

2699.3

No attorneys' fees shall be awarded in an action subject to this Part, including any hearing pursuant to Labor Code Section 98, other than as authorized by this code at the time this Part takes effect.

~~(a) A civil action by an aggrieved employee pursuant to subdivision (a) or (f) of section 2699 shall commence only after the following requirements have been met:~~

~~(1)(A) The aggrieved employee or representative shall give written notice by online filing with the Labor and Workforce Development Agency and by certified mail to the employer of the specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violation.~~

~~(B) A notice filed with the Labor and Workforce Development Agency pursuant to subparagraph (A) and any employer response to that notice shall be accompanied by a filing fee of seventy-five dollars (\$75). The fees required by this subparagraph are subject to waiver in accordance with the requirements of Sections 68632 and 68633 of the Government Code.~~

~~(C) The fees paid pursuant to subparagraph (B) shall be paid into the Labor and Workforce Development Fund and used for the purposes specified in subdivision (j) of Section 2699.~~

~~(2) (A) The agency shall notify the employer and the aggrieved employee or representative by certified mail that it does not intend to investigate the alleged violation within 60 calendar days of the postmark date of the notice received pursuant to paragraph (1). Upon receipt of that notice or if no notice is provided within 65 calendar days of the postmark date of the notice given pursuant to paragraph (1), the aggrieved employee may commence a civil action pursuant to Section 2699.~~

~~(B) If the agency intends to investigate the alleged violation, it shall notify the employer and the aggrieved employee or representative by certified mail of its decision within 65 calendar days of the postmark date of the notice received pursuant to paragraph (1). Within 120 calendar days of that decision, the agency may investigate the alleged violation and issue any appropriate citation. If the agency determines that no citation will be issued, it shall notify the employer and aggrieved employee of that decision within five business days thereof by certified mail. Upon receipt of that notice or if no citation is issued by the agency within the time limits prescribed by subparagraph (A) and this subparagraph or if the agency fails to provide timely or any notification, the aggrieved employee may commence a civil action pursuant to Section 2699.~~

~~(C) Notwithstanding any other provision of law, a plaintiff may as a matter of right amend an existing complaint to add a cause of action arising under this part at any time within 60 days of the time periods specified in this part.~~

~~(b) A civil action by an aggrieved employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision of Division 5 (commencing with Section 6300) other than those listed in Section 2699.5 shall commence only after the following requirements have been met:~~

~~(1) The aggrieved employee or representative shall give notice by online filing with the Division of Occupational Safety and Health and by certified mail to the employer, with a copy to the Labor and Workforce Development Agency, of the specific provisions of Division 5 (commencing with Section 6300) alleged to have been violated, including the facts and theories to support the alleged violation.~~

~~(2) (A) The division shall inspect or investigate the alleged violation pursuant to the procedures specified in Division 5 (commencing with Section 6300).~~

~~(i) If the division issues a citation, the employee may not commence an action pursuant to Section 2699. The division shall notify the aggrieved employee and employer in writing within 14 calendar days of certifying that the employer has corrected the violation.~~

~~(ii) If by the end of the period for inspection or investigation provided for in Section 6317, the division fails to issue a citation and the aggrieved employee disputes that decision, the employee may challenge that decision in the superior court. In such an action, the superior court shall follow precedents of the Occupational Safety and Health Appeals Board. If the court finds that the division should have issued a citation and orders the division to issue a citation, then the aggrieved employee may not commence a civil action pursuant to Section 2699.~~

~~(iii) A complaint in superior court alleging a violation of Division 5 (commencing with Section 6300) other than those listed in Section 2699.5 shall include therewith a copy of the notice of violation provided to the division and employer pursuant to paragraph (1).~~

~~(iv) The superior court shall not dismiss the action for nonmaterial differences in facts or theories between those contained in the notice of violation provided to the division and employer pursuant to paragraph (1) and the complaint filed with the court.~~

~~(B) If the division fails to inspect or investigate the alleged violation as provided by Section 6300, the provisions of subdivision (c) shall apply to the determination of the alleged violation.~~

~~(3) (A) Nothing in this subdivision shall be construed to alter the authority of the division to permit long-term abatement periods or to enter into memoranda of understanding or joint agreements with employers in the case of long-term abatement issues.~~

~~(B) Nothing in this subdivision shall be construed to authorize an employee to file a notice or to commence a civil action pursuant to Section 2699 during the period that an employer has voluntarily entered into consultation with the division to ameliorate a condition in that particular worksite.~~

~~(C) An employer who has been provided notice pursuant to this section may not then enter into consultation with the division in order to avoid an action under this section.~~

~~(4) The superior court shall review and approve any proposed settlement of alleged violations of the provisions of Division 5 (commencing with Section 6300) to ensure that the settlement provisions are at least as effective as the protections or remedies provided by state and federal law or regulation for the alleged violation. The provisions of the settlement relating to health and safety laws shall be submitted to the division at the same time that they are submitted to the court. This requirement shall be construed to authorize and permit the division to comment on those settlement provisions, and the court shall grant the division's commentary the appropriate weight.~~

~~(c) A civil action by an aggrieved employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision other than those listed in Section 2699.5 or Division 5 (commencing with Section 6300) shall commence only after the following requirements have been met:~~

~~(1) (A) The aggrieved employee or representative shall give written notice by online filing with the Labor and Workforce Development Agency and by certified mail to the employer of the specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violation.~~

~~(B) A notice filed with the Labor and Workforce Development Agency pursuant to subparagraph (A) and any employer response to that notice shall be accompanied by a filing fee of seventy-five dollars (\$75). The fees required by this subparagraph are subject to waiver in accordance with the requirements of Sections 68632 and 68633 of the Government Code.~~

~~(C) The fees paid pursuant to subparagraph (B) shall be paid into the Labor and Workforce Development Fund and used for the purposes specified in subdivision (j) of Section 2699.~~

~~(2) (A) The employer may cure the alleged violation within 33 calendar days of the postmark date of the notice sent by the aggrieved employee or representative. The employer shall give written notice within that period of time by certified mail to the aggrieved employee or representative and by online filing with the agency if the alleged violation is cured, including a description of actions taken, and no civil action pursuant to Section 2699 may commence. If the alleged violation is not cured within the 33-day period, the employee may commence a civil action pursuant to Section 2699.~~

~~(B) (i) Subject to the limitation in clause (ii), no employer may avail himself or herself of the notice and cure provisions of this subdivision more than three times in a 12-month period for the same violation or violations contained in the notice, regardless of the location of the worksite.~~

~~(ii) No employer may avail himself or herself of the notice and cure provisions of this subdivision with respect to alleged violations of paragraph (6) or (8) of subdivision (a) of Section 226 more than once in a 12-month period for the same violation or violations contained in the notice, regardless of the location of the worksite.~~

~~(3) If the aggrieved employee disputes that the alleged violation has been cured, the aggrieved employee or representative shall provide written notice by online filing with the agency and by certified mail to the employer, including specified grounds to support that dispute, to the employer and the agency. Within 17 calendar days of the receipt of that notice, the agency shall review the actions taken by the employer to cure the alleged violation, and provide written notice of its decision by certified mail to the aggrieved employee and the employer. The agency may grant the employer three additional business days to cure the alleged violation. If the agency determines that the alleged violation has not been cured or if the agency fails to provide timely or any notification, the employee may proceed with the civil action pursuant to Section 2699. If the agency determines that the alleged violation has been cured, but the employee still disagrees, the employee may appeal that determination to the superior court.~~

~~(d) The periods specified in this section are not counted as part of the time limited for the commencement of the civil action to recover penalties under this part.~~

~~(e) This section shall become operative on July 1, 2021.~~

2699.4

The division shall create and maintain a Consultation and Policy Publication Unit for the purpose of providing information, advice, and assistance to employers, employees, and other members of the public about laws enforced by the division.

(a) An employee who contacts the Unit because the employee believes the employer is not complying with laws enforced by the division shall be immediately directed by the Unit to the appropriate enforcement arm of the division to file a complaint.

(b) The Unit shall have the sole responsibility within the division to maintain and keep current any information the division publishes on its website to clarify how the division interprets or enforces the laws under its jurisdiction.

(c) An employer who is not subject to a pending division enforcement action shall be entitled to request a confidential consultation with the Unit, and subject to the provisions of subsection (c)(2) shall have the opportunity to correct, without penalty, any violations found as a result of the consultation.

(1) The findings of any consultation shall be recorded in a confidential written report and shall be binding on the division, unless and until the division at a later date withdraws the report or amends the report and provides written notice to the employer of the change.

(2) If the report identifies violations, they shall be corrected within a reasonable time frame, but no longer than 60 days after the report is received by the employer.

(d) An employer may request in writing that the Unit issue a compliance advice letter answering one or more questions about how to comply with a law or regulation enforceable by the division, and the Unit shall issue the letter within 3 months of receiving the written request.

(1) Every compliance advice letter shall be published on the division's website and shall be binding on the division, unless and until the division at a later date withdraws the letter or amends the letter and publishes the change on its website.

(2) An amended compliance advice letter shall not take effect or otherwise be enforceable until 30 days following publication on the division's website.

(3) Nothing in this section is intended to alter any requirement for the division to comply with the Administrative Procedure Act, Government Code section 11340 et seq.

2699.5

There shall be an ombudsperson within the Department of Industrial Relations, reporting to the director, who shall serve as a point of contact for any person who has a complaint about actions taken by the division.

The provisions of subdivision (a) of Section 2699.3 apply to any alleged violation of the following provisions: subdivision (k) of Section 96, Sections 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, and 224, paragraphs (1) to (5), inclusive, (7), and (9) of subdivision (a) of Section 226, Sections 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of Section 1174, Sections 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, Sections 1735, 1771, 1774, 1776,

~~1777.5, 1811, 1815, 2651, and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3073.6, 6310, 6311, and 6399.7.~~

2699.6

The division shall not contract with any non-governmental entity or attorney to pursue any claim or legal action against an employer on behalf of the division. Neither the division nor any other government agency or employee shall disclose information obtained by a division investigation to any member of the public until the investigation has been concluded and a decision has been made by the division about whether to issue a citation in response to the findings of the investigation.

~~(a) This part shall not apply to an employee in the construction industry with respect to work performed under a valid collective bargaining agreement in effect any time before January 1, 2025, that expressly provides for the wages, hours of work, and working conditions of employees, premium wage rates for all overtime hours worked, and for the employee to receive a regular hourly pay rate of not less than 30 percent more than the state minimum wage rate, and the agreement does all of the following:~~

~~(1) Prohibits all of the violations of this code that would be redressable pursuant to this part, and provides for a grievance and binding arbitration procedure to redress those violations.~~

~~(2) Expressly waives the requirements of this part in clear and unambiguous terms.~~

~~(3) Authorizes the arbitrator to award any and all remedies otherwise available under this code, provided that nothing in this section authorizes the award of penalties under this part that would be payable to the Labor and Workforce Development Agency.~~

~~(b) Except for a civil action under Section 2699, nothing in this section precludes an employee from pursuing any other civil action against an employer, including, but not limited to, an action for a violation of the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code), Title VII of the Civil Rights Act of 1964 (Public Law 88-352), or any other prohibition of discrimination or harassment.~~

~~(c) The exception provided by this section shall expire on the date the collective bargaining agreement expires or on January 1, 2028, whichever is earlier.~~

~~(d) For purposes of this section, "employee in the construction industry" means an employee performing work associated with construction, including work involving alteration, demolition, building, excavation, renovation, remodeling, maintenance, improvement, repair work, and any other work as described by Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, and other similar or related occupations or trades.~~

~~(e) This section shall remain in effect only until January 1, 2028, and as of that date is repealed.~~

2699.7

All funds received by the Labor and Workforce Development Agency pursuant to the Labor Code Private Attorneys General Act of 2004 shall be redirected to the Labor Enforcement and Compliance Fund to support enforcement activity by the division.

Section 2.

The following additional sections of the Labor Code are amended to read:

90.5

(a) It is the policy of this state to vigorously enforce minimum labor standards in order to ensure employees are not required or permitted to work under substandard unlawful conditions or for employers that have not secured the payment of compensation, and to protect employers who comply with the law from those who attempt to gain a competitive advantage at the expense of their workers by failing to comply with minimum labor standards.

(b) In order to ensure that minimum labor standards are adequately enforced, the Labor Commissioner shall establish and maintain a field enforcement unit, which shall be administered in coordination with the physically separate from offices of the division that accept and determine individual employee complaints to maximize the efficiency, effectiveness and timeliness of enforcement of labor standards and recovery of funds and penalties owed to employees. The unit shall have offices in Los Angeles, San Francisco, San Jose, San Diego, Sacramento, and any other locations that the Labor Commissioner deems appropriate. The unit shall have primary responsibility for administering and enforcing those statutes and regulations most effectively enforced through field investigations, including without limitation Sections 226, 1021, 1021.5, 1193.5, 1193.6, 1194.5, 1197, 1198, 1771, 1776, 1777.5, 2651, 2673, 2675, and 3700, for managing wage claims involving multiple employees, and for carrying out in accordance with the plan adopted by the Labor Commissioner pursuant to subdivision (c). Nothing in this section shall be construed to limit the authority of this unit in enforcing any statute or regulation in the course of its investigations.

(c) The Labor Commissioner shall adopt an enforcement plan for the field enforcement unit. The plan shall do all of the following:

(1) Identify priorities for investigations to be undertaken by the unit that ensure the available resources will be concentrated in industries, occupations, and areas in which employees are relatively low paid and unskilled, and those in which there has been a history of violations of the statutes cited in subdivision (b), and those with high rates of noncompliance with Section 3700.

(2) Describe and implement a method to determine the effectiveness of the plan, i.e., to determine quantitatively to the extent possible whether the industries or industry segments targeted by the plan are improving compliance with labor laws and standards as the result of division enforcement pursuant to the plan and the degree to which improvement, if any, is occurring.

(3) Identify changes to be made to the plan and the unit needed to improve their effectiveness and ensure meeting all required time frames for conducting and finalizing enforcement actions.

(d) The Labor Commissioner shall annually report to the Legislature, not later than March 1, concerning the effectiveness of the plan and unit. The report shall include, but not be limited to, all of the following:

(1) The enforcement plan adopted by the Labor Commissioner pursuant to subdivision

- (c) and any changes that have been made to the plan in the previous year, including the rationale for the priorities identified in the plan as well as the findings made pursuant to, and progress in implementing the activities required by, subdivisions (c)(2) and (c)(3).
- (2) The number of establishments investigated ~~by the unit~~ pursuant to the plan, and the number of types of violations found.
- (3) The amount of wages found to be unlawfully withheld from workers, and the amount of unpaid wages and penalties collected and paid to recovered for workers.
- (4) The amount of penalties and unpaid wages transferred to the General Fund as a result of the efforts of the unit.

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(a) The Labor Commissioner, his deputies, and agents, may issue subpoenas to compel the attendance of witnesses and parties and the production of books, papers and records; administer oaths; examine witnesses under oath; take the verification, acknowledgment, or proof of written instruments; and take depositions and affidavits for the purpose of carrying out the provisions of this code and all laws which the division is to enforce.

(b) In issuing a subpoena duces tecum to an employer against whom a wage claim has been made, the division may, in lieu of engaging in enforcement of the subpoena pursuant to section 93, provide notice with the subpoena of reasonable assumptions it will make about the information sought by the subpoena if the documentation requested by the subpoena is not provided within 30 days of the date of service. These assumptions shall be treated as binding determinations of fact for the purposes of the claim in question, unless:

(1) the employer objects in good faith to the scope of the subpoena and the employer complies with the portion of the subpoena the employer believes represents the proper scope, or

(2) the employer can show that it is not reasonably possible to provide the information sought within the 30-day time frame together and produces the documents sought by the subpoena as soon as reasonably possible.

96.1

(a) By March 1, 2022, and by that date annually thereafter, the division shall submit a report to the Department of Finance and the budget committees and relevant policy committees of the Legislature that includes the following information pertaining to the prior calendar year:

(1) The number of wage claims submitted.

(2) The number and type of alleged labor law violations in those claims.

(3) The average estimated prehearing amounts of unpaid wages, penalties, and other demands for compensation, including, but not limited to, liquidated damages.

(4) The total of unpaid wages, penalties, and other compensation, including, but not limited to, liquidated damages, agreed to in settlements enforceable by the Labor Commissioner.

(5) The total of unpaid wages, penalties, and other compensation, including, but not limited to, liquidated damages, payable to aggrieved employees under orders,

decisions, and awards issued during the reporting year pursuant to Section 98.

(6) The total amount of wages, penalties, and other compensation, including, but not limited to, liquidated damages, arising from orders, decisions, and awards is that remain unpaid.

(b) The information provided in subdivision (a) shall also be broken down by industry sectors.

(c) The division shall also include in each annual report a discussion detailed description and analysis of:

(1) the major challenges to adjudicating wage claims, including without limitation failure to meet statutory time frames for administering and resolving wage claims,

(2) ongoing efforts changes needed to address those challenges, and

(3) administrative, policy, and legal options to improve the state's wage claim process.

(d) A report to be submitted pursuant to this section shall be submitted in compliance with Section 9795 of the Government Code.

~~(e) This section shall remain in effect only until January 1, 2031, and as of that date is repealed.~~

Section 3.

The provisions of this Part are severable. If any portion, section, subdivision, paragraph, clause, sentence, phrase, word, or application of this chapter is for any reason held to be invalid by a decision of any court of competent jurisdiction, that decision shall not affect the validity of the remaining portions of this chapter. The people of the State of California hereby declare that they would have adopted this chapter and each and every portion, section, subdivision, paragraph, clause, sentence, phrase, word, and application not declared invalid or unconstitutional without regard to whether any other portion of this chapter or application thereof would be subsequently declared invalid.

Section 4.

(a) This Initiative shall be liberally construed and applied in order to fully promote its underlying purposes.

(b) The provisions of this Initiative shall not be amended by the Legislature except to further its purposes by a statute passed in each house by roll call vote entered in the journal, three quarters (3/4) of the membership concurring, or by a statute that becomes effective only when approved by the electorate.

(c) This Initiative shall become operative and take effect pursuant to Subdivision (a) of Section 10 of Article II of the Constitution. After the effective date of this initiative, no penalties shall accrue under former section 2699 in any pending civil action that has not resulted in a judgment.